

**United States Department of the Interior
U.S. Fish and Wildlife Service
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AESO/FA

January 9, 2001

Ms. Cindy Lester
Chief, Regulatory Branch
U.S. Army Corps of Engineers
3636 North Central Avenue, Suite 760
Phoenix, Arizona 85012-1936

Dear Ms. Lester:

The Service has received Public Notice 2000-00599-AP (PN) dated December 11, 2000, issued by the U.S. Army Corps of Engineers. Rio Verde Services, Inc. has submitted an application for a Section 404 Clean Water Act (CWA) permit to develop the 856-acre Vista Verde development in Maricopa County, Arizona (Section 25 and 26, T5N, R6E). These comments are provided under the authority of and in accordance with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended U.S.C. 661 et. seq.) (FWCA), but do not constitute our final review of the permit application under the FWCA.

The PN indicates the proposed project would impact 856.2 acres on undeveloped land through construction of residential lots, commercial facilities, and golf greens. A total of 13.2 acres of jurisdictional washes would be affected by the discharge of dredged and/or fill material to accommodate placement of building pads and crossings for streets, driveways, and fairways. We believe the total impact of the development which would be authorized by your agency should be assessed, including indirect and cumulative effects and any interrelated and interdependent activities. We believe the footprint of the project to be permitted by your agency is, at a minimum, the total 856.2 acres of development.

The PN states that a preliminary determination has been made that an environmental impact statement is not required for the proposed work. As such, we assume that your agency is preparing an environmental assessment (EA) in accordance with the National Environmental Policy Act (NEPA). Considering the proximity to the Verde River and the relative undeveloped nature of project site, we are concerned that this 856.2-acre residential development could significantly affect the quality of the human environment. We request that, when completed, the draft EA be submitted to our office so we may evaluate the significance of environmental impact.

The PN states preliminary determinations indicate the proposed activity would not affect endangered or threatened species, or their critical habitat and therefore formal consultation under section 7 of the Endangered Species Act is not required. We do not concur with your no effect determination. Based on the map provided with the PN, the proposed development is within a mile of Box Bar Ranch where threatened bald eagles (*Haliaeetus leucocephalus*) have been known to nest for at least the past seven years. This nest site has had some limited reproductive success and a pair of bald eagles are currently incubating at Box Bar. Experiments by McGarigal et al. (1991) have found that human activity can have a significant effect on eagle behavior. We believe the current trend of urbanization in the Rio Verde area could negatively affect foraging, resting, loafing, and nesting activities of bald eagles at Box Bar and we are concerned that increasing disturbance associated with urbanization may eventually lead to nest site abandonment.

Please note that these concerns have been previously expressed to your agency in comments submitted by our office and the Arizona Game and Fish Department on 404 permit applications for the Tonto Verde development. In spite of these concerns your agency made the decision to forego section 7 consultation on Tonto Verde. We are becoming increasingly concerned that your agency's impact analysis is consistently too narrow to adequately evaluate potential effects on listed species. In this particular case, we believe that adverse effects to the bald eagle will be realized through construction of Vista Verde. The PN states that a biological evaluation (BE) was completed in June, 1999. We request that you submit the BE to our office and reevaluate the need for formal consultation.

The PN states that 68.6 acres of jurisdictional washes would be preserved and a mitigation plan has been proposed that will require planting of approximately 37 acres of native vegetation within two wash corridors. No other information regarding the nature of mitigation is included in the PN. In accordance with existing regulations and procedures, mitigation measures should be developed that first address the issues of avoidance and minimization, and lastly compensation. For compensation, mitigation and monitoring measures should be developed that address the totality of unavoidable project related impacts. We request that the mitigation plan be submitted to our office for review.

The 404(q) Memorandum of Agreement Between the Department of the Interior and the Department of the Army provides for cooperation in acquiring and conveying project information needed by either agency to fulfill its permit review responsibilities. At this time we believe we have not been provided adequate project information to allow us to prepare substantive project specific comments. Therefore, the Service requests this permit be held in abeyance and the

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comment period extended until we have had an opportunity to review the EA, BE, and mitigation plan, and provide substantive comments and recommendations in accordance with the FWCA and the CWA.

If we can be of further assistance please contact Mike Martinez (x224) or Don Metz (x217).

Sincerely,

/s/ David L. Harlow
Field Supervisor

cc: Regional Administrator, Environmental Protection Agency, San Francisco, CA
Supervisor, Project Evaluation Programs, Arizona Game and Fish Department, Phoenix, AZ

Literature Cited

McGarical, K., R.G. Anthony, and F.B. Isaacs. 1991. Interactions of humans and bald eagles on the Columbia River Estuary. Wildlife Monographs. No. 115.

Vistaverde-pn.wpd: